Reprint
as at 23 August 2010

Commodity Levies (Winegrapes) Order 2004

(SR 2004/249)

Commodity Levies (Winegrapes) Order 2004: revoked, on 23 August 2010, by section 13(1) of the Commodity Levies Act 1990 (1990 No 127).

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 23rd day of August 2004

Present:
The Right Hon Helen Clark presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the

Note
Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This order is administered by the Ministry of Agriculture and Forestry.

Minister of Agriculture (being satisfied as to the matters required by section 5 of that Act), makes the following order.

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Order

1 Title

This order is the Commodity Levies (Winegrapes) Order 2004.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Interpretation

In this order, unless the context otherwise requires,—

buyer means a person who buys product from a grower; and in relation to any product bought from a grower, means the person who bought the product

Council means the body that, on the commencement of this order, was known as the New Zealand Grape Growers Council Inc

farm-gate price, in relation to any winegrapes sold in New Zealand by or on behalf of their grower, means the price paid to their grower for them

FOB value, in relation to any quantity of winegrapes exported from New Zealand in respect of which a customs entry has been made, means the value of those grapes as specified in the declaration attached to or forming part of the entry

grape juice and **grape juice concentrate** mean, respectively, the juice of grapes and grape juice that has been concentrated by the removal of water from it

grapes means grapes of the genus *Vitis*

grower means a person whose business is or includes the growing of winegrapes for sale or for the production of grape juice or grape juice concentrate for sale; and,—

(a) in relation to any grapes, means their grower at the time of their harvest; and

(b) in relation to any grape juice or grape juice concentrate, means the grower of the grapes from which it was made

levy means the levy imposed by clause 4

levy money means money paid under this order as levy; and includes any goods and services tax payable on it

levy year means a period of 12 months beginning on 1 July and ending with the following 30 June, and includes the period commencing with the commencement of this order and ending with 30 June 2005

mediator means a person appointed under clause 24(1); and, in relation to a dispute, means a mediator appointed to resolve that dispute

Minister means the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is for the time being responsible for the administration of the Commodity Levies Act 1990

New Zealand Wine Grower—

(a) subject to paragraph (b), means the publication that, before the commencement of this order, was from time to time published under that name (under whatever name it may later be published); but

(b) if that publication has ceased to be published, means a publication for the time being specified for the purposes of this order by the Minister by notice in the *Gazette*

notional price means the price referred to in clause 5

product means winegrapes, grape juice, or grape juice concentrate

winegrapes means grapes grown in New Zealand and intended to be used to make wine (whether directly or after the manufacture of grape juice or grape juice concentrate from them) or grape juice or grape juice concentrate.

4 Levy imposed

(1) A levy is imposed on winegrapes grown in New Zealand for sale.

(2) The industry organisation to which the levy is payable is the Council.

5 Basis of calculation of levy

(1) The levy is to be calculated on the basis of the value of winegrapes produced for sale.

(2) The value of winegrapes is to be determined—

(a) in the case of winegrapes sold by or on behalf of their grower in New Zealand, on the basis of their farm-gate price (exclusive of goods and services tax, if any, and before deduction of any costs or charges):

(b) in the case of winegrapes exported from New Zealand by or on behalf of their grower, on the basis of their FOB value (exclusive of goods and services tax, if any, and before deduction of any costs or charges):

(c) in the case of winegrapes processed into grape juice or grape juice concentrate before their sale by or on behalf of their grower, on the basis of a relevant notional price for the grapes determined by the Council under this clause.

(3) The notional price of winegrapes processed into grape juice or grape juice concentrate by any grower is the price that, in the Council's opinion, the grower would receive for them (exclusive of goods and services tax, if any, and before deduction of any costs and charges) if, immediately before they were processed into that product, the grower had sold them to a similar processor situated in the same locality (whether or not there was then in fact a similar processor situated in the same locality).

(4) The Council may fix different notional prices for different varieties and species of winegrapes.

(5) Subject to subclause (6), the notional price of winegrapes for any levy year must be—

(a) fixed by the Council at its annual general meeting in that levy year; and

(b) notified—

(i) in the *Gazette*; and

(ii) to all potential levy payers known to the Council, through the *New Zealand Wine Grower*.

(6) In the case of the levy year ending with 30 June 2005, the notional prices are to be those fixed for that year by the Council at its annual general meeting held in the 2004 calendar year, whether or not that meeting occurs before or after the commencement of this order.

6 Growers primarily responsible for payment of levy

The grower is primarily responsible for paying the levy on winegrapes.

7 Person responsible for payment of levy

(1) If the product is sold in New Zealand by the grower, the buyer must pay to the Council an amount equal to the levy on it (plus goods and services tax, if any).

(2) If the product is exported from New Zealand by or on behalf of the grower, the grower must pay the levy (plus goods and services tax, if any) to the Council.

8 Recovery of levy

A buyer of product from a grower who pays an amount to the Council in respect of the levy due for payment on that product may deduct from any money payable to the grower by the buyer an amount equal to the amount paid (plus goods and services tax, if any).

9 No collection or recovery fee to be charged

No buyer may charge a collection or recovery fee for paying the levy or recovering it from a grower.

10 Levy to be paid at single rate

The levy is to be paid at a single rate.

11 Maximum rate of levy

The maximum rate of the levy is 1.5% of the farm-gate price, notional price, or FOB value (exclusive of goods and services tax, if any).

12 Council to fix actual rate of levy

(1) Subject to subclause (2), the Council must, at its annual general meeting in each levy year, determine the actual rate of the levy for that levy year, before 31 December in that levy year.

(2) In the case of the levy year ending with 30 June 2005, the actual rate of levy is to be that fixed by the Council for that levy year at its annual general meeting held in the 2004 calendar

year, whether or not that meeting occurs before or after the commencement of this order.

13 Previous rate to apply where new rate not fixed in time

Despite clause 12(1), if the Council has not set the actual rate of the levy for a levy year before 31 December in that levy year, the actual rate of the levy for that levy year must be the actual rate of the levy most recently fixed by the Council for a previous levy year.

14 Notification of rate of levy

As soon as practicable after fixing a rate of levy for a levy year, the Council must notify the rate of the levy for the levy year—

(a) by notice in the *New Zealand Wine Grower*; and

(b) by notice in the *Gazette*; and

(c) by notice in 1 or more major metropolitan daily circulating newspapers; and

(d) directly to all potential levy payers and all buyers of winegrapes whose address is known to the Council.

15 Time for payment of levy

(1) The due date for the payment of any amount of levy money payable to the Council on product under this order (plus goods and services tax, if any),—

(a) in the case of product bought in New Zealand from a grower, is the first occasion after harvest of the winegrapes concerned that the buyer is liable to pay the grower for the product:

(b) in the case of product exported by the grower, is the date on which the grower is entitled to payment for it.

(2) The latest date for payment of any amount of levy money payable to the Council in respect of product (plus goods and services tax, if any) is the 20th day of the month following the month in which the due date for its payment falls.

16 Conscientious objectors

Any grower or buyer who objects on conscientious or religious grounds to the payment to the Council of an amount of levy

money may pay the amount concerned to the Director-General of the Ministry of Agriculture and Forestry (or the chief executive of such other department of State as is for the time being responsible for the administration of this order); and, in that case, the Director-General must cause it to be paid to the Council.

17 How levy money to be spent by Council

(1) The general purposes for which the Council (and any of its regional associations) may spend the levy money are as follows:
- (a) research and development of viticulture and oenology:
- (b) market research and development:
- (c) promotion of winegrapes and wine:
- (d) education and training:
- (e) technology transfer:
- (f) development of sustainable viticulture:
- (g) protection and improvement of vine health:
- (h) day-to-day administration of the Council and its regional associations.

(2) Expenditure for any of the above purposes may be for projects on a national or regional level.

(3) The Council may not spend the levy money on commercial or trading activities.

(4) Subject to subclause (5), the Council must spend or (pending its expenditure) invest all levy money paid to it.

(5) The Council may pay any amount of levy money to any of its regional associations, which may spend it or (pending its expenditure) invest it.

18 Consultation on how levy money to be spent

(1) At least every 12 months, the Council must consult growers on how levy money is proposed to be spent and provide details as to the previous 12 months' expenditure.

(2) For the purposes of subclause (1), the Council must—
- (a) communicate with growers by means of—
  - (i) regular newsletters to growers whose postal address the Council has; and

(ii) advertisement in the *New Zealand Wine Grower*; and

(iii) the technical symposium at the Romeo Bragato Conference; and

(iv) any other manner the Council thinks fit; and

(b) invite requests for annual research and other expenditure priorities; and

(c) invite and provide for grower representation on the committee allocating research funding in accordance with the Council's constitution and rules; and

(d) before the Council's annual general meeting in each year, hold advertised meetings in grape-growing regions for the purpose of consulting growers on how levy money is to be spent; and

(e) send to growers, whose postal address it has, written invitations to attend the Council's annual general meeting; and

(f) circulate before the Council's annual general meeting a draft budget and plan for the spending of levy money in the next year; and

(g) present the final proposed expenditure for approval at the Council's annual general meeting.

19 Confidentiality of information

(1) Subject to subclause (2), no person involved in managing, or employed by the management of, the Council may disclose (otherwise than to some other person who is involved in managing, or employed by the management of, the Council) any information obtained, or obtained as a result of actions taken,—

(a) under this order; or

(b) in relation to this order, under the Commodity Levies Act 1990.

(2) Nothing in subclause (1) affects or prevents—

(a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or

(b) the production of any statement under section 25 of that Act; or

(c) the giving of evidence in any legal proceedings taken—

(i) under or in relation to this order; or

(ii) in relation to this order, under or in relation to the Commodity Levies Act 1990.

(3) Nothing in subclause (1) prevents the Council from disclosing or using any information—

(a) for statistical or research purposes (not being information relating to an identifiable person); or

(b) with the consent of every identifiable person to whom the information relates.

(4) Nothing in subclause (1) prevents the disclosure to, and use of any information by, a returning officer or person or body engaged in the election of members or officeholders of the Council to determine the voting entitlements and to count the votes of members of the Council.

20 Returns

Every grower or buyer must, as soon as is reasonably practicable after receiving the Council's written request for the grower or buyer to do so, give the Council written notice of any information the Council needs to enable it to calculate any amount of levy under clause 5.

21 Records to be retained by grower

The grower of any quantity of winegrapes must keep, and retain for 2 years after the end of each levy year, the following particulars relating to each sale of product in that levy year:

(a) the quantity:

(b) the variety:

(c) the name of the buyer:

(d) the price received:

(e) the amount of levy (if any) paid:

(f) the date the levy (if any) was paid directly by the grower to the Council:

(g) the quantity of winegrapes processed into grape juice or grape juice concentrate:

(h) copies of any declaration attached to or forming part of the customs entry in respect of the export of any product produced by the grower.

22 Records to be retained by buyer

A buyer of any quantity of product from a grower must keep, and retain for 2 years after the end of the levy year in which the product was bought, the following particulars in respect of each purchase of the product:

(a) the quantity:
(b) the variety:
(c) the name of the grower:
(d) the price paid:
(e) the amount of levy paid by the buyer to the Council:
(f) the date the levy was paid.

23 Records to be retained by Council

The Council must keep, and retain for 2 years after the end of the levy year in which it was paid or invested or spent (as the case may be),—

(a) records of every amount of levy money paid to it and, in relation to each amount,—
  (i) the day on which it was received; and
  (ii) the person who paid it; and
(b) records of—
  (i) how (if at all) levy money paid to it was invested; and
  (ii) how and when all money spent by it was spent.

Mediation

24 Appointment of mediators

(1) If a dispute arises as to—

(a) whether any person is required to pay the levy; or
(b) the amount of levy money any person is required to pay,—

any party to the dispute may ask the President of the New Zealand Institute of Chartered Accountants to appoint a person to resolve the dispute by mediation; and in that case the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.

(2) The mediator's appointment ends if—

(a) the parties to the dispute have resolved it by agreement; or

(b) the parties to the dispute have not resolved it by agreement, and the mediator has resolved it by coming to 1 or more findings in relation to it.

Clause 24(1): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

25 Remuneration of mediators

(1) Subject to subclause (2), a mediator must be paid remuneration (by way of fees and allowances) agreed by the parties to the dispute concerned.

(2) If the parties to a dispute cannot agree a mediator's remuneration, the President of the New Zealand Institute of Chartered Accountants (or a person authorised by the President to do so) must—

(a) fix an amount or several amounts to be paid to the mediator as remuneration; and

(b) specify the party by which each amount is to be paid.

(3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

Clause 25(2): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

26 Time and place of conference

Every conference of the parties to a dispute by a mediator must be held on a day and at a time and place fixed, and notified in writing to the parties, by the mediator.

27 Conference to be held in private

Except as provided in clause 28, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

28 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to a

dispute to attend a conference of the parties to the dispute organised by the mediator.

29 Right to be heard

Every party to a dispute, and every representative of such a party allowed by the mediator to attend a conference of the parties to the dispute organised by a mediator, may be heard at the conference.

30 Evidence

(1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally be admissible in a court of law.

(2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to enable a dispute to be settled or resolved.

(3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

31 Mediator may resolve dispute in certain cases

If—

(a) the mediator has organised and presided at a conference of the parties but the dispute has not been settled; or

(b) the mediator believes that the parties are unlikely to settle the dispute, whether or not they confer directly,—

the mediator may resolve the dispute for them, and give each of them a written notice of the mediator's resolution of the dispute, and the mediator's reasons for determining that particular resolution.

32 Appeal to District Court

(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 31 may appeal to a District Court against the decision.

(2) The appeal must be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time a District Court Judge allows.

(3) The Registrar of the court must—

(a) fix the time and place for the hearing of the appeal, and notify the appellant and the other parties to the dispute; and

(b) serve a copy of the notice of appeal on every other party to the dispute.

(4) Every party may appear and be heard at the hearing of the appeal.

(5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.

(6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

33 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 is to be remunerated by the Council at a rate determined by the Minister after consultation with the Council.

34 Revocation

The Commodity Levies (Winemaking Grapes) Order 1998 (SR 1998/349) is revoked.

Diane Morcom,
Clerk of the Executive Council.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 26 August 2004.

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Notes

1 General

This is a reprint of the Commodity Levies (Winegrapes) Order 2004. The reprint incorporates all the amendments to the order as at 23 August 2010, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* http://www.pco.parliament.govt.nz/reprints/.

2 Status of reprints

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 How reprints are prepared

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, *see* http://www.pco.parliament.govt.nz/editorial-conventions/ or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted.

A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as "of this section" and "of this Act")
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as "the 1st day of January 1999" is now expressed as "1 January 1999")

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 List of amendments incorporated in this reprint (most recent first)

New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74): section 11

Commodity Levies Act 1990 (1990 No 127): section 13(1)

Wellington, New Zealand:
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